

<b>Institution:</b> Goldsmiths, University of London		
<b>Unit of Assessment:</b> 34(B): Communication, Cultural and Media Studies, Library and Information Management		
<b>Title of case study:</b> Transforming Intellectual Property (IP) policy debates: Economics into Intellectual Property		
<b>Period when the underpinning research was undertaken:</b> 2015-2019		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Nicola Searle	Senior Lecturer EPSRC Digital Economy Fellow	2015 - present
<b>Period when the claimed impact occurred:</b> 2015-2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>1. Summary of the impact</b>		
<p>Dr Searle has generated a research-driven dialogue that Intellectual Property (IP) policy makers and legal communities, working across the United Kingdom (UK), United States (US), European Union (EU) and United Nations (UN), have adopted as a new lingua franca. By driving the embodiment of economic thinking into IP practice and governance, Searle's work has shaped IP policy, creating systems that are better aligned with the socioeconomic structures and the principles and practices of the Creative Industries (CI). By prompting self-reflection amongst legal practitioners and encouraging policy-makers and legal practitioners to adopt economic analysis to deal with copyright law in the context of the digital era, Searle's research has changed the nature of IP policy debate so that it upholds the interests of existing copyright holders and creators making new content, and ultimately those of consumers.</p>		
<b>2. Underpinning research</b>		
<p>The creation, distribution and consumption of creative goods has been transformed by the digital era, raising new questions of the interpretation and application of copyright law. Should consumers, for example, be able to copy bought music onto their computer (known as the private right of copying)? Or, should musicians be legally able to parody others (parody exception)? Issues like these create a conflict between the legal framing of Intellectual Property (IP), where IP is a natural, given right (labour theory) and the economic framing of IP, where IP is a policy mechanism to incentivise innovation (social contract theory). The rigid structure of copyright (and its economic justification), argues Searle, is at odds with what motivates innovators and it highlights the intrinsic tension between artistic integrity and the commercial market [R1]. Dr. Nicola Searle's nuanced take on the economic theory of IP bridges different frameworks used in policy and industry through an interdisciplinary approach that draws together economics, management techniques, collaborations with sociologists and a deep understanding of IP law.</p> <p>Searle critiques the traditional economic (neo-classical) framing, one that undervalues the distribution of financial and non-financial impacts of CI policies, and highlights the importance of social contexts, such as the cultural capital of the Creative Industry (CI) [G1, G2]. In <i>Creating Economy</i> (2019), co-authored with sociologists Townley and Roscoe, Searle presents a theoretical and empirical analysis of creators' complex relationship with IP. Based on 122 interviews with creators in multiple creative fields, the book highlights bias</p>		

in current economic analysis and questions the incentive-to-innovate assumption that is central to economic justifications of IP policy [R1].

To improve the system, IP policy-makers need to create new IP laws and practices that benefit creators, and by extension, consumers. Investigating the economic analysis of intangible assets (copyright) in the CI sector, where value and quantitative assessments are complex, Searle critiques existing IP policy narratives, demonstrating that economic analysis of IP is frequently applied inconsistently or blocked entirely to the detriment of new evidence-based policy [R2, R3, R4, R5]. Furthermore, in a meta-analysis of 80 CI business models in 2016-17 (CREATE, [G2]), Searle concludes that, despite changes brought about by the digital era, IP policy debate remains remarkably stable. She finds that vested interests in the CI inhibit IP policy reform, and that the CI continually lobby to support existing models, which benefit incumbents, at the expense of effecting more profound changes [G2, R4].

Until recently, economics has been noticeably absent in IP policymaking, but Searle's research demonstrates and expands the vital contribution of economic analysis to the field and its potential uses;

- 1) in industry, where decision making situations have been thwarted because of the way economics and law is interpreted (e.g. black-letter law approaches) [R2];
- 2) in IP policymaking and law, which suffers from regulatory capture, having been dictated almost exclusively by lawyers and existing IP rights holders with limited consideration of smaller players, consumers and the economic impact of IP policy decisions and,
- 3) in the CI, where miscommunication and biases have limited the potential for new policy that can tackle contemporary IP issues and support more sustainable business models. This research informs her advisory roles on the Engineering and Physical Sciences Research Council (EPSRC) Digital Economy Project Advisory Board and the UK Intellectual Property Office (IPO) Research Expert Advisory Group.

### 3. References to the research

- R1. Townley, Roscoe and Searle (2019) *Creating Economy*, Oxford: Oxford University Press. [Book]. Submitted to REF2.
- R2. Searle (2019) 'The Hard Sell: Economics and IP Policy,' in Waelde & Brown, *Research Handbook on Intellectual Property and Creative Industries*, Edward Elgar. [Book Section]. Available on request.
- R3. Basuchoudhary and Searle (2019) 'Snatched Secrets' in *Computers & Security*, 87. [Article]. Submitted to REF2.
- R4. Searle (2017) 'Business Model, IP and Creative Industries' CREATE Working Paper. [Report]. Available on request.
- R5. Searle (2017) 'Cultural Economics,' in Durrer, Miller & O'Brien, *Routledge Companion to Cultural Policy*, London: Routledge. [Book Section]. Available on request.
- R6. Searle and Brassell (2016) *Economic Approaches to IP*, Oxford: Oxford University Press. [Book]. Available on request.

### Supporting Grants

- G1. Searle, Nicola, (Fellow) EPSRC Digital Economy Fellowship, 2017-2022, GBP700,000
- G2. Searle, Nicola, (PI) CREATE Glasgow Project, 2016-2017, GBP8,000
- G3. Searle, Nicola, Center for the Protection of Intellectual Property, George Mason University, 2019, GBP5,000
- G4. Searle, Nicola, UK Intellectual Property Office, 2020, GBP10,000

#### 4. Details of the impact

On an everyday basis, IP law dictates innovators' and creators' ability to benefit from the fruits of their innovation and mediates the relationship between artists and their works. IP law also affects consumers, influencing the price of creative goods and the legal parameters of consumption.

The pace of economic impact of digital technology and market changes is now much faster than policy development, and Searle's work serves as an important intermediary between the two. By developing a common language, or 'lingua franca', between economists, lawyers and policy makers, Searle's work with the UK Intellectual Property Office (IPO), the UN's Worldwide Intellectual Property Office (WIPO) and with communities of IP legal practitioners has influenced the fundamental nature of policy debate [S1, S2, S3]. By supporting evidence-based policy-making and shaping debates, her work improves the IP environment for creators and consumers around the world by impacting policy and practice.

##### **Informing policy-making at the UK IPO**

Searle's research [R2], as noted by Campbell, a BBC lawyer, unpicks the environment in which 'Governments place more weight on economic data to drive IP policy making' [S4]. Her work identifies these challenges and builds a consensus across the law and economics divisions in policymaking in the creative industries.

Searle's advisory work with the UK IPO has supported changes in policy development by encouraging policy-makers to gain input from previously ignored stakeholders including smaller creators and consumers. The findings of Searle's CI business model research, which indicates the challenges faced by CI are not dominated by IP but by other forces [R1, R4, R5], encouraged policymakers in the UK IPO to focus on market and Small and Medium Enterprises (SME) support, rather than direct legal interventions, as corroborated by the IPO [S1]:

"Economic analysis and evidence building in the IPO's policy area is challenging, and Dr Searle has adopted creative approaches to tackle these challenging topics [...] Using Dr Searle's insights, alongside other independently commissioned research enables the IPO to better delineate between areas appropriate for legal interventions and those more suited to market support. For example, her research on copyright and business models has helped us target our business outreach so that it better supports UK SMEs."

This recommendation features in the IPO guide, which has been made available to developing nations, through cooperation with WIPO.

##### **Influencing IP Policy in the United Nations**

Searle regularly presents to policy-makers (UK IPO, The Department for Digital, Culture, Media & Sport (DCMS), UN, EU) and stakeholders (governments, lawyers, consumers and other organisations across the CI value chain domestically and internationally), serving as a peer reviewer for government reports, domestically (UK IPO, DCMS) and internationally (UN, EU) to support the use of robust analysis, to ensure results are not unduly influenced by outliers or observational bias.

For example, in 2015, Searle, based on her CI body of research ([R1, R6] and earlier), reviewed and edited drafts of the WIPO Report on the African Fashion Design Industry: Capturing Value through Intellectual Property. Working with WIPO at the African Ministerial Conference in Dakar, Senegal, Searle supported discussions on the report and policymaking

on fashion and IP in African countries. These talks led to the Dakar Declaration on Intellectual Property for Africa (2015) in which the ministerial members committed to, “Enhance innovative and creative capacities by providing a conducive environment with dynamic IP systems that propel creativity, innovation and inventiveness...,” amongst other commitments. The Dakar declaration cites both the WIPO report and the conference proceedings, with references to the importance of the socioeconomic context, of IP in the CI, as promoted by Searle [S2]. The declaration helped develop a culture that encourages “powerful institutions like the World Trade Organisation (WTO) and WIPO to meet Africa where it is, rather than impose legislation and regulation,” in keeping with Searle’s focus on the socio-economic nuance of IP.

### **Changing Attitudes towards economic analysis of IP amongst IP Practitioners**

Searle’s research has convinced communities of legal practitioners to take a “level-headed, sympathetic approach to intellectual property rights” [S5].

Alienated by theory-heavy economics research which bears little resemblance to the realities of copyright law in digital era, the IP legal community has traditionally viewed economic analysis of IP with extreme scepticism. By sharing her research through the IPKat, the world’s largest and most popular English-speaking IP blog, with a subscriber list of 15,000 readers and 20,400 Twitter followers, ranked the ‘Most Popular Intellectual Property Blawg’ and ‘Most Popular Copyright Blog’ of all time by Justia (an international legal resource website), Searle has convinced IP legal practitioner and policy communities to go beyond a legal academic analysis and embed economic thinking into their practice and governance [S3a, S6]. This in turn ensures that the interests of copyright holders, creators and consumers are upheld. Searle has been the “sole economist member of the IPKat team”, whose writing, according to one lawyer, “has significantly enabled our readers to better understand how economic perspectives and analyses can be brought to bear on a wide range of IP issues”, helps to “bridge the longstanding gap between economic and legal thinking regarding IP” and has; “shaped the IP community’s viewpoints [..] encouraging interdisciplinary approaches and improved evidence-based policy-making” [S3a].

Providing a new space for debate about the application of economic analysis, Searle’s IPKat articles written during the REF period on the economics of IP have amassed over 193,000 views and 370 comments as of July 2020, meaning both a large readership and high levels of engagement. In addition to continued activity on her back catalogue, REF period blog posts were read on average 2,400 times (2013-2020) [S6]. To put this in context, over a similar period (2010-2017), the average LSE public facing blog post was read 1,400 times\*. Her blog post, “Some Economics of Collecting Societies” (Collecting societies are organisations responsible for the collective of copyright royalties) prompted the editor of the Intellectual Property Magazine, a US-based international practitioner publication, to publish a letter supporting her convictions that collecting societies lacked transparency [S7]. Such a provocation would have previously been an anathema in a professional publication, given the social and political capital these societies hold amongst legal practitioners. However, Searle’s challenge to long held beliefs has increased awareness of the economic context of IP law [S8, S9] and spurred self-reflection in the IP practitioner community which prompted this influential practitioner to publicly question their practice [S7, S10]. This work continues with economics and IP projects for IP policy and practice forums [G3], and policymakers [G4].

Nurturing a forum for debate represents a significant development for the culture of legal practitioners, as evidenced in this testimonial:

“The creative industries, an industry Dr. Searle has worked on extensively, has undergone dramatic changes in recent years and put significant pressure on copyright regimes. Nicola has patiently and clearly communicated her research in this area. She has helped my fellow IP lawyers better understand economics and be more sympathetic to its arguments.”

Amongst this community, Searle’s work provokes self-reflection and challenges its scepticism of economics, encourages reflection on how changes to economics impact IP rights, and engenders support for economic analysis and in-depth analyses of the relationship between IP law and economics.

Notes:

\*See, Booluck, K [“How can blogging help research make an impact beyond academia? Illustrative examples from the LSE blogs; LSE Impact Blog”](#), (27/09/2017).

### 5. Sources to corroborate the impact

S1. Written testimony, letter from UK Intellectual Property Office (IPO), 20 October 2020.

S2. Report, *Dakar Declaration on Intellectual Property for Africa*, 2015, p.2.

S3. Written testimony from international and UK-based IP lawyers, a) Dr. Eyal Bressler and Company, Tel Aviv, Israel, b) English Lawyer and Partner at gunnercooke llp, c) UK and European Patent Lawyer and Partner at EIP. [Grouped Source]

S4. Book review (BBC Lawyer writing in academic publication), Jake Campbell (2019)

"Research Handbook on Intellectual Property and CI", *script-ed*, 16:1 p.76.

S5. Blog post, (by anonymous author on an IP software company website) [“Should the IP community listen to economists?”](#) CIPHER, published 13/11/2016, retrieved 30 August 2019.

S6. Social media engagement statistics for IPKat (a blog for the IP Community whose readership dominated by legal practitioners, as well as academics and policymakers), as of 15 July 2020.

S7. Published letter, T. Philips, (2015) “From the Editor,” *Intellectual Property Magazine*, October 2015.

S8. Book review/Blog post for IPKat, (Judge, High Court, Chancery Division in practitioner publication) Sir Richard Arnold (2016) [“Book Review: Arnold reviews \*Economic Approaches to Intellectual Property\*”](#), retrieved 7<sup>th</sup> September 2020.

S9. Book review by practicing lawyer in academic & practitioner publication, Alexandria Chun (2017) *“Economic Approaches to Intellectual Property, by Nicola Searle and Martin Brassell.”* *Osgoode Hall Law Journal* 54.4 1389-1394.

S10. Book review by practicing lawyer in practitioner publication, Alfred Frawley (2016) *Economic Approaches to Intellectual Property, Nicola Searle and Martin Brassell, The Trademark Reporter* 106/6 pp1133-1134.